

### **REMARKS/ARGUMENTS**

The Applicants have carefully considered this application in connection with the Examiner's Final Office Action electronically sent February 5, 2008, and the Advisory Action dated June 6, 2008. The Applicants respectfully request reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicants originally submitted Claims 1-23 in the application. In previous responses, the Applicants amended Claims 1, 6, 11, 16, and 21. In the present response, the Applicants have amended Claims 1, 11, and 21. Support for the amendment can be found, *e.g.*, in paragraphs 19-26 and Figure 2 of the original specification. No other claims have been canceled or added. Accordingly, Claims 1-23 are currently pending in the application.

#### **I. Rejection of Claims 1-2, 5-12, and 15-23 under 35 U.S.C. §103**

Previously, the Examiner rejected Claims 1-2, 5-12, and 15-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0102978 by Yahagi (hereinafter "Yahagi") in view of U.S. Patent Application Publication No. 2004/0009751 by Michaelis, *et al.* (hereinafter "Michaelis") and U.S. Patent Application Publication No. 2004/0066763 by Hashimoto *et al.* (hereinafter "Hashimoto"). The Applicants believe the invention as presently claimed, however, is neither shown nor suggested in the cited portions of the cited combination of Yahagi, Michaelis, and Hashimoto. More specifically, the Applicants fail to find where the cited combination teaches or suggests evaluating at least two different candidate wireless communication networks based a real-time calculation of a time needed for a data transfer between a mobile

communication device and each communication server associated with the at least two different candidate wireless communications networks that is unique to each transfer as recited in now amended independent Claims 1, 11, and 21.

The Examiner recognizes that Yahagi does not teach a quality parameter determined by calculating a time needed for each transfer and cites paragraphs 22-23 of Michaelis to cure this deficiency. The Examiner asserts that Michaelis teaches a typical round trip time (RTT) which is a communication quality parameter determined by calculating time needed for a data transfer. (See Final Rejection of February 5, 2004, pages 4 and 7.) Claims 1, 11, and 21, however, have been amended to more clearly point out that the time calculated for the data transfer is a real-time calculation that is unique to each data transfer made between the mobile communication device and each of the candidate networks. While the RTT of Michaelis may be determined by calculating a time needed for a data transfer, the typical RTT of Michaelis is not unique to each data transfer between the mobile communication device and each of the candidate networks. On the contrary, the mobile communication device of Michaelis does not even perform a data transfer to each candidate network to determine a unique data transfer time, but instead generates a system latency parameter based on a time delay added to a typical RTT kept by the access point 14. (See, e.g., paragraph 23 of Michaelis.)

Thus, Michaelis does not teach or suggest a unique data transfer time as presently claimed. As such, the cited combination of Yahagi, Michaelis, and Hashimoto does not provide a *prima facie* case of obviousness for presently amended independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a)

rejection of Claims 1-2, 5-12, and 15-23 and allow issuance thereof.

## **II. Rejection of Claims 3-4 and 13-14 under 35 U.S.C. §103**

Previously, the Examiner rejected Claims 3-4 and 13-14 under 35 U.S.C. §103(a) as being unpatentable over Yahagi in view of Michaelis and Hashimoto as applied to Claim 1 and further in view of U.S. Patent Application Publication No. 2002/0087674 by Guilford, *et al.* (hereinafter "Guilford"). The Applicants respectfully disagree.

As established above, the cited combination of Yahagi, Michaelis, and Hashimoto does not provide a *prima facie* case of obviousness for presently amended independent Claims 1 and 11. Guilford has not been cited to cure the above-noted deficiencies of the cited combination of Yahagi, Michaelis, and Hashimoto but to teach candidate networks can be GSM or UMTS and may employ different technologies such as GPRS or EDGE. (*See* Final Rejection of February 5, 2009, page 8.) As such, the cited combination of Yahagi, Michaelis, Hashimoto, and Guilford does not establish a *prima facie* case of obviousness of presently amended independent Claims 1 and 11 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 3-4 and 13-14 and allow issuance thereof.

### III. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-23.

The Applicants request the Examiner to telephone the undersigned agent of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink, appearing to read "Steven J. Hanke". The signature is fluid and cursive, with the first name "Steven" and last name "Hanke" clearly distinguishable.

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